IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 909 of 2006
With
FIRST APPEAL No. 910 of 2006
To
FIRST APPEAL No. 936 of 2006
With
FIRST APPEAL No. 409 of 2006
With
CIVIL APPLICATION No. 4152 of 2006
To
CIVIL APPLICATION No. 4167 of 2006
With
CIVIL APPLICATION No. 2280 of 2006
In FIRST APPEAL No. 409 of 2006
with
CIVIL APPLICATIONS No. 4205 to 4216 of 2006.

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M.YASIN & CO. THR' PROPRIETOR - Appellant(s)
Versus
AHMEDABAD MUNICIPAL CORPORATION-THR' MUNICIPAL COMMISSIONER - Defendant(s)

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Appearance :
MR KV SHELAT for Appellant(s) : 1,
NANAVATI & NANAVATI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18-21/04/2006

ORAL COMMON JUDGMENT

By way of these First Appeals under Section 96 of the Code of Civil Procedure, the appellants herein, original-plaintiffs, have challenged the judgment and decree passed by the learned Judge, City Civil Court, Ahmedabad dated 31st March 2005 in Civil Suits No. 6866 of 1996 and other cognate suits by which the learned Trial Court Judge has dismissed the suits in which the respective appellants, original-plaintiffs challenged the notices issued under Section 212(1) and Section 212(2) of the Bombay Provincial Municipal Corporations Act [hereinafter referred to as "the BPMC Act"] issued by the Director, Estate and Town Planning, Ahmedabad Municipal Corporation, by which the appellants were informed for acquiring the lands/suit properties for the purpose of road widening, known as Astodia Road Widening from 60 ft. To 100 ft.

2. The learned Trial Court Judge, after appreciating the evidence on record, dismissed all

the suits with certain clarification and passed the following operative order;

> “i) The present group of suits hereby stand dismissed.
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> ii) However, with clarification that the Corporation shall deposit the amount with the State Government towards compensation after ascertaining the market value of each property on the basis of valuation report whether occupied as a owner or as a tenant occupant having other interest in the property and shall not proceed further until the exercise is undertaken. It goes without saying that the amount so deposited is without prejudice to the rights of the parties.
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> iii) The adinterim injunction granted if any in any of the suits below Notice of Motion shall hereby stand vacated.
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> iv) Decree to be drawn up accordingly in each of the suits.....”

3. Shri KV Shelat, learned advocate appearing on behalf of the respective appellants, under instruction from his clients, has made a statement at the Bar that the appellants crave leave to withdraw all these appeals. However, he has requested to

modify the judgment and decree to the extent of modification of clarification as mentioned in Para (ii) of the operative portion of the order to the effect that the learned Trial Court Judge has directed the Corporation to deposit the amount of compensation with the State Government. It is submitted that such a clarification to deposit the amount of compensation with the State Government was not warranted as the State Government has nothing to do with the acquisition and road widening and therefore he has requested to modify the said clarification by directing the Corporation to pay the compensation to the respective appellants/claimants directly without depositing the same with the State Government. Shri Dave, learned advocate appearing on behalf of the Ahmedabad Municipal Corporation has fairly conceded and has submitted that let the said clarification be modified to the aforesaid extent.

4. With a view to see that the residents of Ahmedabad may get a bigger road of 100 ft. From 60 ft., as early as possible as the first proposal to widen the Astodia Road from 60 ft. To 80 ft., was

proposed and accepted by the Standing Committee of the Ahmedabad Municipal Corporation which was recommended by the Municipal Commissioner in the year 1974 and pursuant thereto the proposal of widening from 80 ft. to 100 ft. came to be accepted in the year 1975, this Court called upon a responsible officer of the Municipal Corporation to ascertain within how much time award for compensation will be declared and the amount as per award will be paid to the respective appellants/claimants so that further action for widening of the road from 60 ft., to 100 ft., can be taken. This was necessitated in view of the fact that while dismissing the suits, the learned Trial Court Judge has directed that the Corporation shall deposit amount with the State Government towards compensation after ascertaining market value of each property on the basis of valuation report whether occupied as a owner or as a tenant occupant having other interest in the property and shall not proceed further until the exercise is undertaken. It is required to be noted that such a clarification was not required at all and widening of the road cannot be stopped. However, in view of the fact that the

Corporation has not preferred any appeal against the said clarification and/or no cross-objections are filed, this Court in appeals filed by the appellants, original-plaintiffs will not be justified in disturbing the same. However, on obtaining instructions from Shri B.R. Sheth, Deputy Commissioner, Ahmedabad Municipal Corporation who is present in the Court, Shri Dave, learned advocate appearing on behalf of the Municipal Corporation, has made a statement before this Court that an award for compensation as required under Section 216 read with 390 of the BPMC Act will be declared after completing all the procedures within the period of four months from today and that actual payment as per the award would be made to the respective appellants/claimants within the further period of 4 months thereafter. The Corporation is directed to act accordingly meaning thereby that after the period of 8 months from today, the Municipal Corporation is directed to proceed further with widening of the road from 60 ft. To 100 ft. On making payment of compensation as stated hereinabove.

5. The direction issued by the learned Trial Court Judge, vide clarification made in Para (ii) of the operative portion of the order that the Corporation shall deposit the amount with the State Government towards compensation, is modified with consent of the learned advocates, to the effect that instead of depositing the amount with the State Government towards compensation, the Municipal Corporation shall pay the amount of compensation as per the award to be declared as stated hereinabove under the provisions of the BPMC Act straightway to the concerned appellants/claimants. With this clarification, modification and direction on recording the statement made by the learned advocate on instructions from the Deputy Commissioner of the Municipal Corporation present in the Court as hereinabove stated, the appellants are permitted to withdraw the present Appeals. Accordingly, all these Appeals are dismissed as withdrawn with part modification as stated above. However, there will be no order as to costs.

Rmr. *[M.R. Shah, J.]*